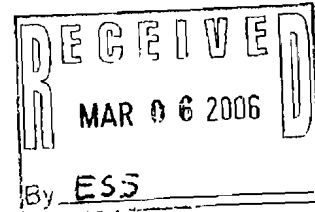


Massachusetts Bankers Association



February 17, 2006

Thomas J. Curry
Director
Federal Deposit Insurance Corporation
550 Seventeenth Street, N.W
Washington, DC 20429

Dear Tom.

As the general debate on Wal-Mart/ILCs continues, and Wal-Mart's deposit insurance application resides with the FDIC, I thought the following analysis of the original Senate report language vs. the final Conference Committee Report language on the Competitive Equality Banking Act of 1987 (CEBA) might be of interest

The Senate's legislative history of CEBA indicates that Congress did not intend any special purpose bank to have transaction account capability. In fact the Conference Report barred limited purpose trust companies and credit card banks from offering demand deposits or other transaction accounts, including NOW accounts.

Specifically, Section 2 of the Bank Holding Company Act (current law as amended by CEBA) states that these institutions may not accept "demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others." Yet the language for ILCs omits two words and states that they may not accept "demand deposits that the depositor may withdraw by check or similar means for payment to third parties or others." Therefore, by omitting the two words "or deposits" ILCs were allowed to offer NOW accounts which are considered savings/deposit accounts.

Ken Ehrlich, an MBA Associate Member attorney with Nutter, McClennen & Fish, LLP provided us the details of this history which we found quite interesting given the current Wal-Mart debate. We hope you find this helpful. In the meantime, if you have any questions please call me or Jon Skarin at (617) 523-7595. Thanks for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to be "D. Forte", written over a horizontal line.

Daniel J. Forte
President

DJF:aam
Enclosure

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COMPETITIVE EQUALITY BANKING ACT OF 1987

JULY 31, 1987.—Ordered to be printed

Mr. ST GERMAIN, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 27]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 27) to facilitate the provision of additional financial resources to the Federal Savings and Loan Insurance Corporation and, for purposes of strengthening the reserves of the Corporation, to establish a forbearance program for thrift institutions and to provide additional congressional oversight of the Federal Home Loan Bank Board and the Federal home loan bank system, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the "Competitive Equality Banking Act of 1987".

(b) *TABLE OF CONTENTS.*—

TITLE I—FINANCIAL INSTITUTIONS COMPETITIVE EQUALITY

Sec. 100. Short title.

Sec. 101. Amendments to the Bank Holding Company Act of 1956.

Sec. 102. Amendments to the Federal Reserve Act.

Sec. 103. Securities affiliations of nonmember insured banks.

Sec. 104. Amendments to savings and loan holding company provisions of the National Housing Act.

Sec. 105. Amendment to the Federal Home Loan Bank Act.

Sec. 106. Securities affiliations of FSLIC insured institutions.

Sec. 107. Mutual holding company amendments.

Sec. 108. Leasing authority of national banks.

- Sec. 611. Civil liabilities.
- Sec. 612. Parity in clearing.
- Sec. 613. Effective dates.

TITLE VII—CREDIT UNION AMENDMENTS

- Sec. 701. Short title.
- Sec. 702. Second mortgage and home improvement loans.
- Sec. 703. Ownership interest.
- Sec. 704. Faithful performance.
- Sec. 705. Membership officers.
- Sec. 706. Nonparticipation.
- Sec. 707. Property acquisition flexibility.
- Sec. 708. Treatment of NCUAB funds.
- Sec. 709. Technical and clarifying amendments; removal and prohibition authority.
- Sec. 710. Effect of removal or suspension.
- Sec. 711. Imposition of conservatorship.
- Sec. 712. Reduction in State comment waiting period.
- Sec. 713. Authority as conservator.
- Sec. 714. Liquidation proceedings.
- Sec. 715. Transfer of FTC jurisdiction to NCUAB.
- Sec. 716. Assets which may be pledged.

TITLE VIII—LOAN LOSS AMORTIZATION

- Sec. 801. Loan loss amortization for agricultural banks.

TITLE IX—FULL FAITH AND CREDIT OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS

- Sec. 901. Reaffirmation of security of funds deposited in federally insured depository institutions.

TITLE X—GOVERNMENT CHECKS

- Sec. 1001. Report on difficulty in cashing Treasury checks.
- Sec. 1002. Time limit on payment of Treasury checks.
- Sec. 1003. Cancellation of Treasury checks.
- Sec. 1004. Limitation on reclamation actions and claims.
- Sec. 1005. Regulations.
- Sec. 1006. Effective date.

TITLE XI—INTEREST TO CERTAIN DEPOSITORS

- Sec. 1101. Interest to certain depositors.

TITLE XII—MISCELLANEOUS PROVISIONS

- Sec. 1201. High yield bond study.
- Sec. 1202. Study of competitive issues in the payments mechanism.
- Sec. 1203. Study and reports concerning direct investments.
- Sec. 1204. Adjustable rate mortgage caps.
- Sec. 1205. Separability of provisions.

TITLE I—FINANCIAL INSTITUTIONS COMPETITIVE EQUALITY

SEC. 100. SHORT TITLE.

This title may be cited as the "Competitive Equality Amendments of 1987".

SEC. 101. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) DEFINITIONS.—

(1) AMENDMENT TO DEFINITION OF BANK.—Section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)) is amended to read as follows:

"(c) BANK DEFINED.—For purposes of this Act—

"(1) *IN GENERAL.*—Except as provided in paragraph (2), the term 'bank' means any of the following:

"(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act.

"(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both—

"(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

"(ii) is engaged in the business of making commercial loans.

"(2) *EXCEPTIONS.*—The term 'bank' does not include any of the following:

"(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

"(B) An insured institution (as defined in subsection (j)).

"(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

"(D) An institution that functions solely in a trust or fiduciary capacity, if—

"(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

"(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

"(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

"(iv) such institution does not—

"(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act; or

"(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act.

"(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act).

"(F) An institution which—

"(i) engages only in credit card operations;

"(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

"(iii) does not accept any savings or time deposit of less than \$100,000;

"(iv) maintains only one office that accepts deposits; and

"(v) does not engage in the business of making commercial loans.

"(G) An organization operating under section 25 or section 25(a) of the Federal Reserve Act.

"(H) An industrial loan company, industrial bank, or other similar institution which is—

"(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act—

"(I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

"(II) which has total assets of less than \$100,000,000; or

"(III) the control of which is not acquired by any company after the date of the enactment of the Competitive Equality Amendments of 1987; or

"(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987,

except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate.

"(I) The Investors Fiduciary Trust Company, located in Kansas City, Missouri, so long as such institution—

"(i) engages only in trust, fiduciary, and agency activities in which it was lawfully engaged on March 5, 1987;

"(ii) engages in such activities only at the same number of locations at which such activities were conducted on such date;

"(iii) does not accept demand deposits other than demand deposits which are maintained by such institution in—

"(I) a trust or fiduciary capacity;

"(II) the institution's capacity as a custodian or as a paying, transfer, shareholder servicing, securities clearing, escrow, or dividend disbursing agent; or

"(III) any capacity which is incidental to the trust or fiduciary activities of the institution;

"(iv) does not engage in the business of making commercial loans;

"(v) does not exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act; and

"(vi) is not directly or indirectly controlled by any company other than a company which directly or indirectly controlled such institution on March 5, 1987.

"(J) A savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which—

"(i) is an insured bank (as defined in section 3(h) of such Act);

"(ii) is a subsidiary of the Great Western Financial Corporation as a result of an approval in writing by the State bank supervisor of the State of New York before June 30, 1987;

"(iii) meets or exceeds the investment requirements which an insured institution must meet in order to be a qualified thrift lender under section 408(o) of the National Housing Act; and

"(iv) does not, directly, or through insurance products such savings bank receives from or provides to the Great Western Financial Corporation, engage in the sale or underwriting of insurance,

except that this subparagraph shall cease to apply with respect to such savings bank or any successor institution if any deposits of any other subsidiary or affiliate of the Great Western Financial Corporation which are subject to an assessment of an insurance premium under subsection (b) or (c) of section 404 of the National Housing Act are, directly or indirectly by any device whatsoever, transferred to or acquired by such savings bank or any successor institution which would have the effect of materially reducing such premium assessments. The exemption provided by this subparagraph shall cease to apply if Great Western Financial Corporation uses such savings bank or any successor institution as a vehicle to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance.

"(3) DISTRICT BANK.—The term 'District bank' means any bank operating under the Code of Law for the District of Columbia."

(2) AMENDMENT TO DEFINITION OF THRIFT INSTITUTION.—Section 2(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(i)) is amended to read as follows:

"(i) THRIFT INSTITUTION.—For purposes of this Act, the term 'thrift institution' means—

"(1) any domestic building and loan or savings and loan association;

"(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

"(3) any Federal savings bank; and

"(4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act."